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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ANGELO AMATO,

11 Plaintiff,

12 v.

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14  
15 NARCONON FRESH START d/b/a  
Sunshine Summit Lodge et al.,

16 Defendants.

CASE NO. 3:14-cv-0588-GPC-BLM

**ORDER:**

**(1) DENYING DEFENDANTS'  
NARCONON INTERNATIONAL  
AND ASSOCIATION FOR BETTER  
LIVING AND EDUCATION  
INTERNATIONAL MOTION TO  
DISMISS;**

**[ECF No. 30]**

**(2) VACATING HEARING DATE**

17  
18 **I. INTRODUCTION**

19 Before the Court is defendants Narconon International (“NI”) and Association  
20 for Better Living and Education International’s (“ABLE”) Motion to Dismiss. (ECF  
21 No. 30). Plaintiff Angelo Amato (“Plaintiff”) opposes. (ECF Nos. 34.)

22 The parties have fully briefed the motion. (ECF Nos. 30, 34, 38.) The Court finds  
23 the motion suitable for disposition without oral argument pursuant to Civil Local Rule  
24 7.1(d)(1). Upon review of the moving papers, admissible evidence, and applicable law,  
25 the Court **DENIES** NI and ABLE’s motion to dismiss.

26 **II. PROCEDURAL HISTORY**

27 On March 13, 2014, Plaintiff filed a complaint alleging three causes of action  
28 against Narconon Fresh Start d/b/a Sunshine Summit Lodge (“Fresh Start”). (ECF No.

1 1.) On August 11, 2014, this case was assigned to the Honorable Gonzalo P. Curiel.  
2 (ECF No. 16.) On November 7, 2014, Plaintiff filed a Fifth Amended Complaint (the  
3 “FAC”) alleging five causes of action against Fresh Start, NI, and ABLE. (ECF No.  
4 29.)

5 On November 21, 2014, NI and ABLE filed a motion to dismiss Plaintiff’s  
6 complaint. (ECF No. 30.) On December 19, 2014, Plaintiff filed an opposition to NI  
7 and ABLE’s motion. (ECF Nos. 34.) On January 9, 2015, NI and ABLE filed a  
8 response to Plaintiff’s opposition. (ECF No. 38.)

### 9 III. FACTUAL BACKGROUND

10 Plaintiff alleges that he is a mixed martial arts fighter who became addicted to  
11 Vicodin prior to December 19, 2013. (FAC ¶ 15.) On approximately December 19,  
12 2013, Plaintiff alleges that he spoke to Fresh Start employee Dan Carmichael  
13 (“Carmichael”). (*Id.* ¶ 13–14.) Plaintiff alleges that Carmichael told Plaintiff that Fresh  
14 Start’s Narconon “Treatment” Program (the “Narconon Program”) is effective because  
15 its “New Life Detoxification Program” (the “NLD Program”) makes patients sweat out  
16 “residual drug toxins” that cause drug cravings. (*Id.* ¶ 15.) Plaintiff alleges that  
17 Carmichael told Plaintiff that: (1) the NLD Program had been scientifically and  
18 medically proven effective; (2) if Plaintiff underwent the Narconon Program, he would  
19 be under the care of a nurse or doctor at all times; (3) if Plaintiff underwent the  
20 Narconon Program, Fresh Start would provide Plaintiff with “extensive” drug and  
21 addiction counseling; (4) Fresh Start staff are properly trained to care for and treat  
22 addicts; and (5) Plaintiff’s insurance would reimburse 50% of the cost of the Narconon  
23 Program. (*Id.* ¶ 16–17.) Plaintiff alleges that Carmichael directed Plaintiff to Fresh  
24 Start’s website for its Warner Springs, California facility,  
25 (<http://www.sunshinesummitlodge.com>), which represented that the Narconon Program  
26 had a 76% success rate. (*Id.* ¶ 18.)

27 Plaintiff alleges that, based on these representations, he signed a contract to enter  
28 the Narconon Program at the Warner Springs facility. (*Id.* ¶ 19.) Plaintiff alleges that

1 the contract stated that the “Narconon Program” was founded by William Benitez, after  
2 Benitez was inspired by the philosophy contained in L. Ron Hubbard’s book “*The*  
3 *Fundamentals of Thought*,” and that the “Narconon Program” is “secular (NON-  
4 RELIGIOUS) . . . and . . . does not include participation in any religious studies of any  
5 kind.” (*Id.* ¶ 19.) Plaintiff alleges that the full title of L. Ron Hubbard’s book is  
6 “*Scientology: The Fundamentals of Thought*.” (*Id.* ¶ 20.)

7 Plaintiff alleges that Carmichael stated that the Narconon Program’s fee was  
8 \$31,000.00 and that it needed to be paid in full prior to starting the program. (*Id.* ¶ 21.)  
9 Plaintiff alleges that Carmichael told Plaintiff that Plaintiff needed to enter the program  
10 quickly because “if [Plaintiff] did not get help immediately, [Plaintiff] would end up  
11 dead” and there were only two spots left in the program. (*Id.* ¶ 22.) Plaintiff alleges that  
12 he was told over the phone that he would have his own room during the Narconon  
13 Program. (*Id.* ¶ 24.)

14 Plaintiff alleges that there were “numerous empty beds” when he started the  
15 Narconon Program. (*Id.* ¶ 22.) Plaintiff alleges that he started detox after entering the  
16 Warner Springs facility and was only supervised by a 19-year-old who did not have  
17 medical training and slept during the majority of Plaintiff’s detox. (*Id.* ¶ 23.) Plaintiff  
18 alleges that after he finished detox, he began the Narconon Program and was placed in  
19 a room with three people. (*Id.* ¶ 24.)

20 Plaintiff alleges that the Narconon Program had two required components: (1)  
21 course materials consisting of eight L. Ron Hubbard books, and (2) the NLD Program  
22 consisting of a sauna and vitamin regimen. (*Id.* ¶ 25.) Plaintiff alleges that the course  
23 materials taught Scientology doctrines and concepts. (*Id.* ¶ 27.) Plaintiff alleges that the  
24 NLD Program is identical to a Scientology ritual known as “Purification Rundown” or  
25 the “Purif.” (*Id.* ¶ 29.)

26 Plaintiff alleges that Fresh Start’s rationale for the NLD Program is that: (1) drug  
27 residue remains in fatty tissue long after drug use has stopped; (2) drug residue is  
28 occasionally released from fatty tissue causing drug cravings and possible relapse; and

1 (3) the sauna flushes drug residue out of fatty tissue. (*Id.* ¶ 30.) Plaintiff alleges that the  
2 NLD Program contains the following steps repeated daily for five weeks: (1) vigorous  
3 exercise; (2) ingestion of increasing doses of Niacin and a “vitamin bomb”; and (3) six  
4 hours of sauna at temperatures of 160 to 180 degrees Fahrenheit. (*Id.* ¶ 31–32.)

5 Plaintiff alleges that the Niacin doses were well beyond the recommended daily  
6 allowance. (*Id.* ¶ 31.) Plaintiff alleges that no medical personnel oversaw him during  
7 the sauna and that the Warner Springs facility was staffed with recent Narconon  
8 Program patients. (*Id.* ¶¶ 33, 39.) Plaintiff alleges that the claimed benefits of the NLD  
9 Program are false and do not withstand scientific scrutiny. (*Id.* ¶ 34.) Plaintiff alleges  
10 that there is no support for the 76% claimed success rate and that NI was aware that  
11 there is no support for that claimed success rate. (*Id.* ¶ 38.) Plaintiff alleges that no  
12 Fresh Start staff spoke to Plaintiff about substance abuse and instead Plaintiff only  
13 received instruction in Scientology. (*Id.* ¶ 42–43.) Plaintiff alleges that Fresh Start did  
14 not send the required papers to Fresh Start’s insurance company, causing Plaintiff to  
15 be unable to receive reimbursement from his insurance company. (*Id.* ¶ 44.)

16 Plaintiff alleges that Fresh Start and the Church of Scientology consider the  
17 Narconon Program to be an initial step towards a key spiritual journey taken by  
18 Scientologists. (*Id.* ¶ 41.) Plaintiff alleges that Fresh Start documents state that patients  
19 who complete the Narconon Program are to be sent to the nearest Scientology church  
20 “if the individual so desires,” indicating that the Narconon Program is used to recruit  
21 patients to the Church of Scientology. (*Id.* ¶ 40.) Plaintiff alleges that, on January 22,  
22 2014, he left the Narconon Program for several reasons, including that he did not feel  
23 safe and that he felt that the Fresh Start staff were not fit to treat him. (*Id.* ¶ 46.)

24 Plaintiff alleges that Fresh Start, NI, and ABLE are California corporations. (*Id.*  
25 ¶¶ 2, 3, 7.) Plaintiff alleges that Fresh Start is a “corporate sham” and “mere  
26 instrumentality” of NI and ABLE for the purposes of promoting Scientology. (*Id.* ¶¶  
27 49, 68.) Plaintiff alleges that NI and ABLE “govern and control nearly every aspect of”  
28 Fresh Start’s business activities. (*Id.* ¶ 50.) Plaintiff alleges that NI publishes

“operations manuals,” entitled “Running An Effective Narconon Center” and “Opening A Successful Narconon Center,” and requires Fresh Start to comply with these manuals. (*Id.* ¶ 51.) Plaintiff alleges that these manuals show that NI and ABLE “have ultimate authority over [] Fresh Start employees.” (*Id.* ¶ 52.) Plaintiff alleges that permanent Fresh Start employees cannot be terminated without the approval of NI’s Senior Director of Administration, NI and ABLE have “ultimate authority over” hiring Fresh Start employees, Fresh Start employees can petition NI’s Senior Director of Administration to remain employees if they do not meet employee qualification requirements, and Fresh Start employees can file “chits” with NI if they encounter job-related issues. (*Id.* ¶¶ 52–53.) Plaintiff alleges that NI receives ten percent of Fresh Start’s weekly gross income and requires Fresh Start to send NI “detailed weekly reports.” (*Id.* ¶¶ 56–57.) Plaintiff alleges that Fresh Start must receive approval from NI and ABLE before it releases promotional materials or internet websites. (*Id.* ¶ 58.) Plaintiff alleges that NI and ABLE are involved in Fresh Start’s bank account, photos related to L. Ron Hubbard, legal issues, and training materials. (*Id.* ¶ 59–65.) Plaintiff alleges that NI and ABLE are “intimately involved in the day-to-day operations of [] Fresh Start” and have “final authority over all decisions at [] Fresh Start relating to hiring and firing, delivery of services, finances, advertising, training, and general operations.” (*Id.* ¶ 66.) Plaintiff alleges that NI and ABLE are principals of Fresh Start. (*Id.* ¶ 67.)

Plaintiff alleges five causes of action against Fresh Start, NI, and ABLE: (1) breach of contract; (2) fraud; (3) negligence; (4) negligent misrepresentation; and (5) breach of the implied covenant of good faith and fair dealing. (FAC ¶¶ 69–100.)

#### IV. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir.

1 1984); *see Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a  
 2 court to dismiss a claim on the basis of a dispositive issue of law.”). Alternatively, a  
 3 complaint may be dismissed where it presents a cognizable legal theory yet fails to  
 4 plead essential facts under that theory. *Robertson*, 749 F.2d at 534.

5 While a plaintiff need not give “detailed factual allegations,” a plaintiff must  
 6 plead sufficient facts that, if true, “raise a right to relief above the speculative level.”  
 7 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). “To survive a motion to dismiss,  
 8 a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
 9 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
 10 (quoting *Twombly*, 550 U.S. at 547). A claim is facially plausible when the factual  
 11 allegations permit “the court to draw the reasonable inference that the defendant is  
 12 liable for the misconduct alleged.” *Id.* In other words, “the non-conclusory ‘factual  
 13 content,’ and reasonable inferences from that content, must be plausibly suggestive of  
 14 a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969  
 15 (9th Cir. 2009). “Determining whether a complaint states a plausible claim for relief  
 16 will . . . be a context-specific task that requires the reviewing court to draw on its  
 17 judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

18 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the  
 19 truth of all factual allegations and must construe all inferences from them in the light  
 20 most favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th  
 21 Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). Legal  
 22 conclusions, however, need not be taken as true merely because they are cast in the  
 23 form of factual allegations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003);  
 24 *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

## 25 V. DISCUSSION

26 NI and ABLE argue that Plaintiff has failed to allege that they are subject to  
 27 vicarious liability for Fresh Start’s actions. (ECF No. 30-1, at 2.) Specifically, NI and  
 28 ABLE argue that: (1) Plaintiff has pled insufficient facts to invoke alter ego liability;

1 and (2) Plaintiff has pled insufficient facts to show an agency relationship. (*Id.* at  
2 6–12.) Plaintiff counters that his allegations show that NI and ABLE exert sufficient  
3 control over Fresh Start to subject them to liability as principals. (ECF No. 34, at 5–8.)  
4 As an initial matter, unlike previous complaints, the FAC does not appear to allege  
5 alter ego liability. (*See* FAC.) Thus the Court turns to whether the FAC sufficiently  
6 alleges an agency relationship.

7       The leading case in California on whether a contract between two companies  
8 creates an agency relationship is *Patterson v. Domino's Pizza, LLC*. *See* 333 P.3d 723  
9 (Cal. 2014). Though *Patterson* dealt primarily with franchise relationships, *see* CAL.  
10 CORP. CODE § 31005, the parties do not dispute its applicability to this case. (*See* ECF  
11 No. 30-1, at 10–11; ECF No. 34, at 9.) Under California law, an agency relationship  
12 exists is where the alleged principal has the right to control the “means and manner”  
13 of the alleged agent. *Cislav v. Southland Corp.*, Cal. Rptr. 2d 386, 388 (Cal. Ct. App.  
14 1992). The *Patterson* court identified several factors that may bear on whether an  
15 agency relationship exists, including a right to control: (1) hiring, (2) direction, (3)  
16 supervision, (4) discipline, (5) discharge, and (6) “relevant day-to-day aspects of the  
17 workplace behavior of the franchisee’s employees.” 333 P.3d at 739.

18       NI and ABLE argue that Plaintiff’s allegations are mere legal conclusions. (ECF  
19 No. 30-1, at 12.) The Court disagrees. The FAC specifically alleges which areas of  
20 Fresh Start’s business that NI and ABLE have final say over, including “hiring and  
21 firing, delivery of services, finances, advertising, and general operations.” (FAC ¶ 66.)  
22 The FAC additionally alleges NI’s right to control Fresh Start’s “means and manner,”  
23 including: (1) Fresh Start requires NI’s approval to discharge a permanent employee;  
24 (2) Fresh Start employees can petition NI to keep their job when they would otherwise  
25 lose them; (3) NI, with Fresh Start, can take disciplinary action against Fresh Start  
26 employees; and (4) Fresh Start must obtain approval from NI before it can publish  
27 promotional materials or websites. (*Id.* ¶¶ 52, 53, 55, 58.) Accordingly, the Court finds  
28 that Plaintiff’s factual allegations plausibly state that NI and ABLE are subject to

1 vicarious liability for Fresh Start's actions.


2 NI and ABLE next argue that Plaintiff's five causes of actions are insufficient  
3 because the only factual allegations relate to Fresh Start. (ECF No. 30-1, at 13–21.) The  
4 Court has already concluded, however, that the FAC does sufficiently allege that NI  
5 and ABLE are subject to vicarious liability for Fresh Start's actions. *See Patterson*, 333  
6 P.3d at 734–35. Though NI and ABLE argue that certain of Plaintiff's causes of action  
7 contain "no allegations of agency," (ECF No. 30-1, at 19), all five of Plaintiff's causes  
8 of action incorporate the rest of the FAC by reference and thus do include agency  
9 allegations. (See FAC ¶¶ 69, 79 84, 88, 94.) As NI and ABLE do not dispute that the  
10 FAC sufficiently alleges all five causes of action against Fresh Start, (*see, e.g.*, ECF  
11 No. 30-1, at 16 "the only purported specific misconduct is alleged against Fresh Start"),  
12 the Court finds that Plaintiff has sufficiently pled all five causes of action against NI  
13 and ABLE. Accordingly, the Court DENIES NI and ABLE's motion to dismiss.

#### 14 VI. CONCLUSION AND ORDER

15 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 16 1. NI and ABLE's Motion to Dismiss, (ECF No. 30), is **DENIED**; and
- 17 2. The hearing set for January 23, 2015, is **VACATED**.

18 DATED: January 21, 2015

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21 HON. GONZALO P. CURIEL  
22 United States District Judge  
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